

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, August 20, 2013

1:00 P.M. – Committee Room 1, Second Floor

Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Bob Rossi, "here", Harland Lee, "here", Phil Albert, "here", Alternate Norris Ross, "here", John Bloom, "here," Alternate Jack Young, "here." Guy Hansen is excused. Alternate Jack Young will be a voting member in today's public hearing and deliberations.

County staff members present: Peter S. Wegner, Assistant Zoning Director and Lila Dumar, Secretary III.

Other individuals present: Robert McCall

Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and two alternates; one regular member is excused today. Therefore, Alternate Jack Young will act as a full member in today's proceedings. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Robert McCall & Peter S Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No. 13-008 of Margaret McCall Trust; Robert McCall, Agent, 819 Waverly Drive, Arlington Heights IL 60004, requesting a dimensional variance to allow construction of a 25' X 28' garage/art studio 26 feet from the ordinary high water mark (OHWM) of Lake Kawaguesaga, contrary to Section 9.94 (A) (1) Setback of 75 feet, Chapter 9, Oneida County Code of Ordinances. The property is located at 8200 Camp Pinemere Road, located in Section 16, T39N, R6E, PIN MI 2230-7, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on August 9 & 13, 2013; and was posted on the Oneida County Courthouse bulletin board on August 9, 2013. Mr. Albert noted that the proof of publication is in the appeal file; and noted that the media was properly notified.

Secretary Phil Albert stated that an onsite inspection was conducted on this date at approximately 10:00 a.m. for appeal #13-008. The location for the inspection is 8200 Camp Pinemere Road, Minocqua Wisconsin. Present at the onsite inspection were the members of the Board of Adjustment and Diann Koshuta, Zoning Technician; and Robert Mc Call. Observations: Property boundaries, side lot boundaries, the road right-of-way, well and septic were all marked as was the proposed construction. This property is located on a peninsula on Lake Kawaguesaga. Measurements that were provided by the applicant were verified by Department staff. No erosion was observed. Existing structures were identified.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. The public may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

Appellant Testimony.

Mr. Mc Call: Thank you for coming out to the property today. And thank you for your time. We built the original house in 1997. I told one of the members that we were in England at the time. I was stationed in England for my company. So the house was built by remote control so to say. I only saw it twice during the time it was being built. We wouldn't be here at all if I could have put the basement in the house. I got a call in England from the builder. He had encountered a number of rocks that he didn't expect. So he suggested not doing a basement. We limited it to a crawlspace. So I have a gravel crawlspace under the house which obviously isn't very conducive to any kind of storage. And so we couldn't go through the process of trying to figure out a garage. We decided that we would live with it. Subsequent to that, my bride retired and took up art. I don't know if any of you have artists in your family, but it is messy and requires a lot of space. There has to be room for drying and so on. And the way she does that right now, is that we lay out tarps in our living room and she paints when she gets a chance up here. So we would very much like to put up a garage for the obvious storage reasons as we have no place to put our car in the wintertime or store our boats. And we wanted to put an art studio above so she could engage in her hobby. We occupy the house about 20-22 weeks a year all year round. We show up in the wintertime, summertime. The problem is that there is nowhere on the property that I can meet the 75 ft setback. At the widest point it is 130 feet wide at its narrowest point it is 85 or 90. It is a historic property from the standpoint of how it got to be. The "Lagoon" was a boathouse entrance for the hotel that was built there in 1905. The boathouse has since gone to nature, but the lagoon remains. It's a bit higher than it was. As far as OHWM, I know that it was no higher than it is today. I noted in my application, basically what I wanted to build. There is a garage right down the road from me that is basically what we want to build—a 2 car garage with the space above it. And that's about it. As far as....we don't use a

lot of the property. Most of it is vacant or left to nature. The garage placement is about the only place on the property where there is physical space to put it. As far as harm to the public interest, the property is well wooded. I stood where we are going to put the garage and you can't see one neighbor's house; the other neighbor is my brother, Jim. He is about 150 feet away. The other neighbor is about 200 feet away and is shielded by a set of trees from our property. So if you stand at the house and look down the road, you can't see anybody else's property except for my brother's across the lagoon. I mentioned that the crawlspace was supposed to be a basement. What we have is a 3 X 4 trap door under the stairs that we crawl down to use the space that we can down there. It is a complete crawl space. It is dry.

Mr. Lee: Had you put in a basement you said you wouldn't be here. What was your intention?

Mr. Mc Call: The basement was going to be where I would have some storage space. I would keep my tools down there and have some place for my tools, which currently sit in a cabinet.

Mr. Lee: You still wouldn't have a garage then?

Mr. Mc Call: No. Still wouldn't have a garage. But as I said, the garage was kind of an after thought. We were in England at the time when this came in and the basement wasn't there. We basically...we didn't really know what kind of use we would have for the property. We didn't know we would spend quite as much time up here in the winter that we do. We spend a lot of time here in the winter also. We are getting older too.

Mr. Lee: If you weren't considering a garage in the beginning is your need or desire now more for an art studio than it is for a garage?

Mr. McCall: It's really both. We are both retired now. It would be real nice in the winter time when we are up here. Instead of parking the cars outside in the cold. The other issue is when the snow plow comes; there isn't a whole lot of space anywhere to park anything. So I have a need for a garage. I'd like a proper work space. My wife has developed this artistic ability which I applaud. She needs the art studio. I need the garage.

Mr. Lee: Questions from the Board?

Mr. Ross: Most people would desire an attached garage. I think. I'm not sure about that, but possibly. Is there any reason that you haven't considered putting a garage right at the house?

Mr. McCall: There really isn't a whole lot of room. What little space we have, we have a little deck there. It walks around, that's how you get to the lake on the east side. So to put it up against the house...we would have to put it up against the deck.

Mr. Ross: Between the house and the boathouse. There is quite an area in there.

Mr. McCall: I did look in between there. There is a rock bigger than the one they brought the crane in to remove right in the middle of that garden area there between the boathouse. I looked there as an option.

Mr. Albert: Of course, it still wouldn't get you away from the water.

Mr. Mc Call: It would be about 25 feet from the water.

Mr. Albert: Your well is also located there is it not?

Mr. McCall: The well is located within 10 feet and I would have to redo the access to the lake. I measured that out and looked at it.

Mr. Young: Am I correct; is Sand Road on the east side of this drawing?

Mr. Mc Call: It's the south side...no, it is east or southeast, facing southeast with that building.

Mr. Bloom: Your home goes north and south, right?

Mr. McCall: The house goes east and west.

Mr. Bloom: Well, this is north, right?

Mr. McCall: Oh, I see. It's the way the house is configured.

Mr. Bloom: Did you consider a garage on the south end of the house? You've got the two windows and cars parked.

Mr. McCall: That's the master bedroom. The main door to the house is in this little alcove and the deck goes around and that's how you get down to the lake. So if I put a garage there, we'd either have to build a breezeway or something. And it would take away whatever guest parking I would have for anybody else that comes to use the house.

Mr. Young: You say you are going to have a garage door on the south side towards the lagoon.

Mr. McCall: Yes.

Mr. Young: Is that the only garage door you are going to have?

Mr. McCall: No. The main two doors face that little road and the other garage door would be...I thought of the possibility of having a garage door that also faces down to

the lagoon because right now we have a job pulling our RAVE up. It's heavy. That big rubber balloon thing. It would be a lot easier. My brother brings his in through the lagoon. It would be a lot easier if I could bring mine in through the lagoon.

Mr. Young: Phil, what did you say the size of the garage was?

Mr. Albert: It was staked out to be...

Mr. Lee: The request is for 25 X 28, is that correct?

Mr. McCall: That is what was staked out.

Mr. Young: When you were reading from the notice in the paper, what size did you say?

Mr. Albert: 25 X 28.

Mr. Young: I thought he said 23. Sorry.

Mr. Lee: Mr. Mc Call, looking at this diagram, what is this here?

Mr. Mc Call: I was trying to determine whether to put stairs inside or outside. You have to be able to get up there. So, I left it as an option. This would be an external entrance to the second floor. So stairs up. And I figured it 3 ft wide. This depicts what was the original application, 25 X 25 with 3 feet of stairs and deck on the back.

Mr. Lee: Is it your idea that the loft covers the whole garage; it's not a partial loft or something.

Mr. Mc Call: It's the whole thing. It's easier just to go that way.

Mr. Lee: So there are two stories to this structure.

Mr. McCall: Yes. This is basically what we were talking about.

Mr. Lee: That's sort of what it would look like?

Mr. McCall: Yes. This is about five doors from my house.

Mr. Lee: What is the size of this one?

Mr. McCall: I don't know. I didn't want to go on the people's property.

Mr. Lee: It looks a lot bigger. Did you see this Pete?

Mr. Wegner: No. I did not. It looks wider.

Mr. Lee: Do you know what the dimension from the ground to the peak of your building.

Mr. McCall: I do not. I would try to mimic the house and put the same kind of siding that the house has.

Mr. Lee: You are putting basically an 8 ft ceiling in the loft?

Mr. McCall: It depends on whether the builder decides it would make more sense to go up instead of putting an attic on it from a construction standpoint. I just want to make sure it meets the snow load.

Mr. Young: It says here each square equals two feet.

Mr. Lee: I don't think you can count on that. I have never seen an accurate drawing by any appellant. No offense sir. The drawings we receive are really crappy quite frankly.

Mr. Mc Call: Sorry about that.

Mr. Albert: The apron in front of the garage, is that absolutely necessary?

Mr. McCall: Well, I have to have some kind of access. My whole drive is natural so if I can leave it natural I will. I don't have any reason to put concrete there.

Mr. Albert: What if you moved the garage to the southeast, you would move farther away from the OHWM on one side. You are 55 feet on one side and 30 feet on the other side. Centering it more into the peninsula would move it away from the OHWM.

Mr. McCall: Not really. The lagoon is 25 feet.

Mr. Albert: If it's 30 feet I don't know that you can move any closer. Can you even be where you are next to the septic field?

Mr. McCall: Yes. I understand that. The reason I put it where I put it was you saw today how many trees were lost just putting in the septic field. I was trying to save the largest trees. So one of my criteria in selecting a vendor was that he saves those four large trees that are essentially around the corners. If I move it forward, I have to take out two 50 year old oak trees.

Mr. Albert: Where you had it laid out with the yellow rope, there were 10 small trees within the garage area. There were five small trees within the apron. There was one large tree off the left corner.

Mr. McCall: On each of the corners there were large ones too. The trees, one or two which are right where the apron were chopped by the utility company. They came in,

with a phone call to our home in Chicago, and chopped off the top of most of the trees out there. So losing those is not going to be a big problem. There are two good sized trees I'd like to save. That's why it is where it is.

Mr. Bloom: I looked at that and where you had that roped off, along the side of the trees that you picked that you wanted to save, when they go in there and dig for the footings, it is very questionable whether those trees will survive. Very questionable.

Mr. McCall: I went through this before when we built the house. We were very fortunate in that when we built the house that we managed to save those trees. I'd like to give it a shot.

Mr. Lee: Pete, do you have any comments at this point?

County Testimony.

Mr. Wegner: Yes. Where is this apron? I don't see it on here.

Mr. Albert: Right in front of the garage.

Mr. Lee: He had it staked out this morning, I don't know if the pictures show that or not.

Mr. Wegner: What were the dimensions of that?

Mr. Mc Call: 16 feet on the long end and 13 feet on the short end. The road bends there.

Mr. Wegner: As you see in the appeal and denial letter, he came in for a permit for the garage. It was denied because of the proximity to the OHWM and also to the drainfield. First thing the County looks at is if there is a way to get what he wants that is in compliance with the ordinance. The County believes there is a location suitable for this size garage or larger if it is attached to the existing home. The first drawing I am going to hand out is the hashed area; it shows an expandable area meeting the ten ft setback to the septic field and 5 feet to the septic tank. And I have 42 feet to the OHWM per this map to the closest point of the existing building. And a legal pre-existing structure that is between 40-75 feet is allowed 100% expansion. So the County would prefer that he would propose something like the second drawing, approximately 30 X 24 added to the existing home on that side you see in the photos kind of where the van is. If he goes where he is proposing and he was granted a variance, it's not going to be just the garage. It is going to be the apron, and obviously this other door that he depicts as the south side. That is just going to be more disturbance on that side of the building or around the building. As far as the use, another option would be to convert a part of the existing dwelling into an art studio and reduce the size of the garage if there was a problem of locating it on the south side. The County's position is that there are other options that are compliant to get exactly or larger than he is proposing to meet his

needs. If the Board were to grant a variance for what he is proposing, the County would hope that the size of the garage would be reduced. In addition, he would mitigate the 35 ft vegetative buffer and not be allowed to have that door facing the lagoon. What is a rave by the way?

Mr. Mc Call: It's those inner tubes with a trampoline on top for use in the water.

Mr. Lee: I'm not quite following this Pete.

Mr. Wegner: The first drawing has a hashed area that shows an area next to the house that meets all the applicable setbacks. The second drawing just shows a 30 X 24 garage attached to the house.

Mr. Lee: Your logic for this is that you are expanding the house.

Mr. Wegner: Yes. It is permissible. If you were to follow this plan, you would not be required to mitigate the 35 ft buffer. We could issue a permit for it. As far as the rock, there are a lot of things that you can do with it. You could chisel off the top or remove what is needed. I have seen it when they actually cut it with a concrete saw and jack hammer it out to get to the base for the elevation that they need. They will then use that as part of the footing, bolt into it and pour a slab. It may be more cost. But this way you are utilizing the area that is already open and wouldn't need to take down any more trees. And it is compliant with the ordinance.

Mr. Rossi: Is there a setback to the drainfield?

Mr. Wegner: Yes. 10 feet from the drainfield and 5 feet from the septic tank.

Mr. Albert: But as proposed it is not?

Mr. Wegner: Yes. They could get a variance from the State. They wait to see what happens with the Board of Adjustment; then I don't think it would be that hard if you were to get a variance from the Board of Adjustment to also get a variance from the State for the 3 ft setback. If there was a variance I would hope we could put limitations on it as far as the size, how we are going to access it; you'd have to get a variance from the Department of Commerce for that 3 ft setback; and you could reduce it, so it is not so close to the water.

Mr. Ross: Again, the general approach of the County is to look at the lot and see where it could be located without any variance. And you found a spot.

Mr. Wegner: Yes.

Mr. Mc Call: The entrance to the house is on the west side, the main door to the house is on the west side here. If we were to build a garage here, we would have to lay out a

path across the septic system, the septic tank and around this garage to get down to the lake.

Mr. Lee: Couldn't you put a side door in there?

Mr. McCall: I have a side door back here.

Mr. Lee: No, a side door in the garage.

Mr. Mc Call: Walk through the garage to go to the lake? I guess we could. Put two doors on the garage and use it as a walk through.

Mr. Mc Call: It is backing up to the master bedroom suite, where it would be.

Mr. Wegner: How the County looks at it is, to take that parcel and how you can put structures on that property, maybe you've got to reconfigure the inside to accommodate the garage.

Mr. Lee: There would be one other advantage to having it essentially attached to the house, and that is you don't have to walk all the way down there to the garage.

Mr. Ross: Especially in the wintertime.

Mr. Lee: As you get older, you are looking for fewer steps. And I can attest to that.

Mr. McCall: I appreciate that. But taking away my wife's master bedroom suite would probably be a very difficult task for me. I probably should have brought you in the house to let you see.

Mr. Albert: You wouldn't be taking it away. As I understand it, you would be blocking a window.

Mr. McCall: And in order to use the garage to go down to the lake I would have to cut a door through my master bedroom into the garage. I don't think you want to bring your groceries through there, the master bedroom.

Mr. Young: What size is that master bedroom?

Mr. Mc Call: 20 X 25. It's right there.

Mr. Wegner: She could convert the master bedroom into the art studio and add on a master bedroom.

Mr. McCall: The only place we can add onto the house that I know of would be to go above the sunroom, which is this jut out on the other side of the house. It's a 15 X 20 room. And it's got a cathedral ceiling. And it is all glass windows. Obviously the house

was built to take advantage of the fact that I've got water all the way around. I am on an island.

Mr. Lee: Mr. Mc Call, the Board, at least in the past, has been sensitive to people needing garages up here. I mean, we all understand the winters up here. And the need for a garage. An art studio doesn't quite fall into that. I have nothing against the arts or whatever, but in terms of the necessity, the garage has more importance as far as a necessity is concerned. An art studio is more of a convenience type of thing. If you look at the requirements that need to be met, the art studio falls into that category that it is not an absolute necessity. However, I think that being said, if the location that Pete has identified, which he says meets the requirements whereas the proposed site doesn't, I still think you could accommodate both of those things, the garage and the art studio. You could still have a loft in there if you wanted to, and it could be accessed through the garage or directly from the house.

Mr. McCall: I understand. And my only thought about the art studio was if I put a footprint down, I could put it above it without having any other effect on the property. You gentlemen were all there. Saw what we had to go through just to turn around to go back down my road. Most of the tradesmen who come out to the property have to back down the road. If I put the garage in that location, everybody would have to back down the road. There isn't even any room to turnaround.

Mr. Lee: What you might do is where you propose this garage; you could put a little turnaround right there. As a matter of fact, that's what I have done on my own property. I don't have much area in front of my garage to turn around. But people can just back down here a little bit, turn around and go out.

Mr. Mc Call: Ok...well, it's 100 feet.

Mr. Lee: Well, mine isn't a whole lot different.

Mr. McCall: Okay. I understand.

Mr. Lee: I'm just saying it can be done.

Mr. McCall: I know, where there is a will there is a way.

Mr. Rossi: Well, as I see it, you would be in compliance and if it is the way you would like to have it, it would be nonconforming and there is no way of telling what might happen to ordinances in the future.

Mr. Young: I know it's not perfect. My garage is not that far away from the house, and in the wintertime it is tough. Not so much the distance, but the older you get the more apt you are to fall down. So it would be advantageous to you to put that garage as close as you can. 25 years ago when I came up here, it was nothing. But now it is a chore.

Mr. Albert: Can I see Diann's pictures from this morning?

Mr. Wegner: You said the main entrance is right here?

Mr. McCall: Yes.

Mr. Wegner: So now you come out here and go back around. What's this right here?

Mr. Mc Call: This is windows, this is windows, this is windows, this is windows, and this is windows.

Mr. Young: When can you have living quarters on a garage? Aren't there some rules?

Mr. Wegner: We have gone back and forth with this issue of garage and living quarters and the direction the committee has given us is that as long as they don't show a bed in there, or that they are going to be sleeping in it, we are allowing it. This is a prime example where we've got hot tubs, bathrooms, rec rooms; and I'm sure they are spending the night in them, but it is just a matter of catching them. I've done some research and talked to 11 other counties and they said the same thing. The minute you allow plumbing in a garage, you open the door. And the Committee was very adamant that they did not want me to create language on that and not allowing plumbing in a garage. So the whole thing just died.

Mr. Lee: So there is nothing to prevent what he is proposing.

Mr. Wegner: Not at all.

Mr. Albert: But there is, going back to the distance from the septic, what's the code there?

Mr. Wegner: He would have to be 10 feet from the drainfield.

Mr. Albert: So there is a 10 foot minimum.

Mr. Wegner: Right.

Mr. Albert: From the drainfield.

Mr. Wegner: 5 feet from the septic tank and 10 feet from the field. So where he is proposing it, he is following the right process because this is the big hurdle to overcome and usually the Department of Commerce would then grant a variance for something like that. I mean, they have in the past. They just have different criteria obviously.

Mr. Lee: If the garage were to be placed where you suggest, he would be 10 feet from the field.

Mr. Wegner: Yes. Correct.

Mr. Rossi: Everything would be in compliance.

Mr. Wegner: Yes. It would all be in compliance.

Mr. Lee: It's hard to argue against that.

Mr. Rossi: Mr. Mc Call, could I ask you, off of this area here, is that all glass there?

Mr. McCall: It is a fireplace with windows on either side. The other exposure is glass, double doors. That's all windows. The whole 20 is windows.

Mr. Lee: Any other questions? Did you want to say anything further Mr. McCall?

Mr. Mc Call: I was aware when I spoke to Jeff in Minocqua that I probably could put a garage where Mr. Wegner has pointed out. The issue there is that it would really change the use of the property significantly for us if we put the garage there. When the house is in use, we have 5 children who come up. There has to be places to park cars. And that spot there, especially in the wintertime, it is very difficult. It would create a problem relative to where am I going to park two or three minivans when the family comes up. That is a minor problem I know, and it is my problem. It is not your problem. But it would make it very unattractive to put the garage right up against the house, even though we would have the walk. The property down here on the other end of the septic field is right now just nothing. It is just open land.

Mr. Lee: You could park cars there?

Mr. McCall: I guess I could. Take the trees out and level it and make a parking lot out of it. That's true.

Mr. Lee: Park them among the trees here?

Mr. McCall: Yes. I could do that. I would have to think real hard how I would make access to the lake.

Mr. Lee: Other questions? If not I will close the hearing.

1:48 pm – Chairman Lee closed the public hearing. There will be no additional testimony accepted.

The Board deliberated in open session.

Motion by Jack Young, second by John Bloom to deny Appeal # 13-008 of Margaret Mc Call as there are other options available that comply with the ordinance and that reasonable use of the property can be achieved without a variance.

Roll call vote: Bob Rossi, "aye", Harland Lee, "aye", Phil Albert, "aye", John Bloom, "aye," Jack Young, "aye." The motion carried.

Motion by Harland Lee, second by Phil Albert, to extend the decision filing date to Monday, August 26, 2013. The motion carried.

Harland Lee, Chairman

Phil Albert, Secretary